

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK**

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GERARD EDWARD LEHNER,  
Plaintiff,

- v -

Civ. No. 1:11-CV-729  
(TJM/RFT)

INTERNAL REVENUE SERVICE, *Dep't of the  
Treasury*,  
Defendant.

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**APPEARANCES:**

**OF COUNSEL:**

GERARD EDWARD LEHNER  
Plaintiff, *Pro Se*  
P.O. Box 3863  
Kingston, New York, 12402

**RANDOLPH F. TREECE**  
**United States Magistrate Judge**

**REPORT-RECOMMENDATION and ORDER**

On June 28, 2011, *pro se* Plaintiff Gerard Edward Lehner submitted a Complaint along with an Application to Proceed *In Forma Pauperis* (IFP). Dkt. No. 1, Compl; Dkt. No. 2, Mot. for IFP. After reviewing those documents, this Court issued a Report-Recommendation wherein we granted the IFP Application recommended that Plaintiff be afforded an opportunity to amend his Complaint to avoid dismissal. Dkt. No. 4. The basis for that recommendation was Plaintiff's failure to satisfy basic pleading requirements. On August 25, 2011, the Honorable

Thomas J. McAvoy, Senior United States District Judge, adopted our recommendations in total and directed Plaintiff to submit an amended complaint. Dkt. No. 6. On September 15, 2011 the Court received a document from Plaintiff, purporting to be an Amended Complaint. Dkt. No. 7.

Upon reviewing the Amended Complaint, we find that not only did Plaintiff fail to cure the deficiencies in his prior pleading, but also, this new pleading is even more incoherent. It still remains unclear the precise nature of the action being brought, and, Plaintiff fails to indicate the jurisdictional basis for his claim and the relief sought. Having already provided Plaintiff an opportunity to amend, and determining that his amended pleading is unintelligible, we find that dismissal is appropriate. *Salahuddin v. Cuomo*, 861 F.2d 40, 42 (2d Cir. 1988) (“Dismissal . . . is usually reserved for those cases in which the complaint is so confused, ambiguous, vague, or otherwise unintelligible that its true substance, if any, is well disguised.” (citation omitted)).

**WHEREFORE**, it is hereby

**RECOMMENDED**, that this action be **dismissed** due to Plaintiff’s failure to state a claim and to comply with Federal Rules of Civil Procedure 8 and 10; and it is further

**ORDERED**, that the Clerk serve a copy of this Report-Recommendation and Order on Plaintiff by certified mail.

Pursuant to 28 U.S.C. § 636(b)(1), the parties have fourteen (14) days within which to file written objections to the foregoing report. Such objections shall be filed with the Clerk of the Court. **FAILURE TO OBJECT TO THIS REPORT WITHIN FOURTEEN (14) DAYS WILL PRECLUDE APPELLATE REVIEW.**

*Roldan v. Racette*, 984 F.2d 85, 89 (2d Cir. 1993) (citing *Small v. Sec'y of Health and Human Servs.*, 892 F.2d 15 (2d Cir. 1989)); *see also* 28 U.S.C. § 636(b)(1); FED. R. CIV. P. 72 & 6(e).

Date: October 4, 2011  
Albany, New York



RANDOLPH F. TREECE  
United States Magistrate Judge